

Brett Foster (#6089)
Grant Foster (#7202)
Tamara Kapaloski (#13471)
DORSEY & WHITNEY LLP
111 S. Main Street, Suite 2100
Salt Lake City, UT 84111
Telephone: (801) 933-7360
Facsimile: (801) 933-7373
foster.brett@dorsey.com
foster.grant@dorsey.com
kapaloski.tammy@dorsey.com

Attorneys for Plaintiff Blendtec Inc.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

BLENDTEC INC., a Utah corporation,

Plaintiff,

vs.

BLENDJET, INC., a Delaware corporation,

Defendant.

**PLAINTIFF BLENDTEC INC.’S
MOTION TO COMPEL RESPONSES
TO BLENDTEC’S JUNE 22, 2022
DISCOVERY REQUESTS**

Civil No. 2:21-cv-00668-TC-DBP

Judge Tena Campbell
Magistrate Judge Dustin B. Pead

Blendtec served discovery requests on June 22 (**Exhibit 1**). Blendjet responded on July 29 (**Exhibit 2**), and produced documents by September 30. Blendjet claims its responsive document production is “substantially complete,” but has produced just 28 substantive documents (Exh. 3). On November 23, Blendtec sent notice of deficiencies (**Exhibit 3**). Blendjet did not respond until December 28 (**Exhibit 4**). Blendtec’s counsel (Brett Foster and Tammy Kapaloski) conferred with Blendjet’s counsel (Patrick McGill and Jesse Salen) on January 6 (11:30 a.m.).

- **Blendjet has produced no internal documents dated before August 2019**, but has used its trademark since 2017. Blendjet claims both that “Blendjet has not located responsive non-custodial documentation from that time period” and that “discovery is ongoing” and it “will produce additional responsive documentation and information to the extent that it is discovered (or discoverable) in the future.” Exh. 4 at 2. Blendtec’s RFPs were issued six months ago. Blendjet must produce responsive documents dated before August 2019 or certify that none exist, which is inconceivable.
- **Blendjet claims six-month old RFPs are “premature.”** Blendjet has produced little to no documents in response to RFPs 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 20, 21, 22, 23, and 27, which address core issues, claiming it “has substantially completed its production.” Exh. 4 at 2-4. Blendjet also claims Blendtec’s letter is “premature” because “discovery is ongoing.” *Id.* The RFPs are over six months old; they are not premature. The Court should order Blendjet to produce responsive documents or certify in writing that no such documents exist.
- **RFPs 12-18**: In response to seven RFPs regarding advertising, Blendjet produced only a handful of documents and states that although “it has already substantially completed its production,” “it will produce any additional non-custodial ESI . . . that it discovers on a rolling basis if such materials are discovered in the future.” Exh. 4 at 5. This leaves Blendtec guessing as to whether additional documents exist and will be produced. The Court should order Blendjet to produce responsive documents or certify that no documents exist.
- **RFPs 22-23**: Blendjet failed to produce any documents supporting its denials/affirmative defenses and states only that it will produce documents it identifies in the future (Exh. 3 at 8; Exh. 4 at 2). The Court should order Blendjet to produce or specifically identify responsive documents. *See Thymes v. Verizon Wireless, Inc.*, 2017 U.S. Dist. LEXIS 56688, *18 (ordering party to “produce or specifically identify the documents that he alleges support his claims or undermine the defenses in this matter. Failure to fully and timely respond may result in an adverse inference and the conclusion that no responsive documents exist.”).
- **Financial Statements**: Although Blendjet produced a spreadsheet which it contends “reflects the audited profit and loss information.” Blendjet has steadfastly refused to produce its actual annual financial statements despite RFP 26. The Court should order Blendjet to produce its annual financial statements within 10 days.

If Blendjet fails to produce documents now, it should be barred from presenting them later.

DATED this 6th day of January, 2023.

DORSEY & WHITNEY LLP

/s/ Tamara L. Kapaloski

Brett Foster (#6089)

Grant Foster (#7202)

Tamara L. Kapaloski (#13471)

Attorneys for Plaintiff Blendtec Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of January, 2023, a true and correct copy of the foregoing document was served on counsel of record via the Courts CM/ECF System which sent notice to counsel of record:

Patrick M. McGill: pmcgill@sheppardmullin.com

Martin R. Bader: mbader@sheppardmullin.com

Nathan D. Thomas: nthomas@parsonsbehle.com

Elizabeth M. Butler: lbutler@parsonsbehle.com

/s/ Tamara L. Kapaloski